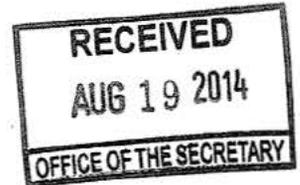


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940
Release No.**

**ADMINISTRATIVE PROCEEDING
File No. 3-15820**

In the Matter of

**Delsa U. Thomas and The
D. Christopher Capital
Management Group, LLC,**

Respondents.

**DIVISION OF ENFORCEMENT'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY DISPOSITION**

**APPENDIX IN SUPPORT OF DIVISION OF ENFORCEMENT'S REPLY IN
SUPPORT OF MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement ("Division") submits the attached appendix in support of its Reply in Support of Motion for Summary Disposition.

Defendants' Motion to Vacate Default Judgment	App. 471 - 481
Plaintiff's Response In Opposition to Motion to Vacate Default Judgment and Brief in Support	App. 482 - 490
Exhibit A-Magee Declaration to Plaintiff's Response	App. 491 - 495
Exhibits 1-6 to Magee Declaration	App. 496 - 535

Dated: August 18, 2014.

Respectfully submitted,



Jessica B. Magee
Texas Bar No. 24037757
United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 978-6465
(817) 978-4927 (facsimile)
MageeJ@sec.gov

COUNSEL FOR
DIVISION OF ENFORCEMENT

ordered. Pursuant to Rule 5(b) of the Federal Rules of Civil Procedures, Proper Service is made when (1) a party is represented by an attorney, and service is made on that party's attorney. (2) Service is made by handing notices to the person being served; (3) Leaving it with; (a) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office of the Defendant or (b) if the person has no office or the office is closed, (c) at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there; (4) Mailing it to the person's last known address; (5) Leaving it with the Court clerk if the person has no known address. (6) Sending it by electronic means if the person consented in writing or delivering it by any other means that the person consented to in writing in which event service is complete when the person making service delivers it to the agency designated to make delivery.

II.

ARGUMENT

In accordance with Rule 5 of the Federal Rules of Civil Procedure on how service is made, defendants argue that when service was made of the Notice to seek Default Judgment by the Plaintiff;

(1) Defendants had no Legal Representation. Plaintiff was informed and completely aware that Defendants were not represented by Legal Counsel. In January of 2013, Plaintiff called prior counsel of the Defendants and was informed by that attorney that they no longer represented the Defendants. In fact, it was the Plaintiff's phone call to the Defendants that notified the Defendants that their attorney no longer represented them. At that time Plaintiff called the Defendants to inquire for the name of the new representation, and was told at that time by Defendant (Thomas") that the Defendants would have to begin reviewing and attempting to

retain new counsel. In March of 2013, Plaintiff called Defendant (“Thomas”) and effected an order pro se to put a hold on the financial accounts of Defendant’s (DCCMG”) and (“SOLOMON”).

(2) At no time was Service ever made to the Defendants by handing documents to the Defendants. Defendants, have never been called, approached or accosted at any time, by a representative or person authorized to act as a Server or any other courier sent by the Plaintiff to serve Notice to seek Default Judgment on behalf of the Plaintiff.

(3) Notices were served to or left with unauthorized individuals. Defendants occupy office space with Regus Inc. Regus Inc., is not a partner, director, owner, authorized signatory, client, or agent of the Defendants. No Regus Inc. employee has ever been given written or verbal authority to act as signatory or agent or representative of the Defendants. A Regus Inc. employee having signatory right over any of Regus’ client’s business matters is strictly prohibited. Regus Inc., prohibits use of business address as registered address for service-of-process. (See Exhibit A). As Defendant (“Thomas”) is the sole principal of both entities (“DCCMG and SOLOMON”), which is ascribed and acknowledge by Plaintiff in the complaint #3:13-cv-00739-L paragraphs 9, filed 02/14/2013. Plaintiff had full knowledge that the Defendants employed no clerks, nor had any other personnel on staff. Yet without verification of authority to act on behalf of the Defendants, Notice to seek Default Judgment was served to unauthorized individuals on behalf of the Defendants, without the Defendants knowledge. While employees of Regus Inc. has authority to collect and hold mail for their clients based solely on the rules established and governed by the United States Postal Service, (See Exhibit B), Regus strictly prohibits their employees to act as signatory for Process of Service for or on behalf of Regus’ clientele. rules for the receipt and or collection of registered mail or certified mail delivered to their clients through couriers other than those of the United States Postal Service, is not a part of Regus Inc. service

agreement for handling clients mail, nor a part of their listed services noted in their terms and conditions. (See Exhibits B and C). Defendants argue that receipt of Service of Notice to seek Default Judgment was not served to Defendants but to Regus Inc. employees as noted on receipt of service card maintained by the Plaintiff and therefore should be considered improper service. At no time does Regus's Terms and Conditions Agreement (See Exhibit C.) authorize their employees to act as agents or employees or clerks on behalf of their clients.

The Defendants also argue that there is no evidence on the part of the Plaintiff, utilizing the United States Postal Service to serve notice to seek Motion for Default Judgment to the Defendants. In fact, evidence suggests that the Plaintiff never once engaged the United States Postal Service in Service of Notice to seek Default Judgment, to the Defendants. This is true based on the fact that the United States Postal Service has no record or have ever once notified Defendants on any occasion that they were in receipt of mail or package that required signatory authorization of receipt as part of a process of service pursuant to Rule 5 of Federal Rules of Civil Procedure, from the Plaintiff. However, evidence exists in the form of signature cards retained by the Plaintiff, that the Plaintiff served and left notices with unauthorized clerks, and individuals not employed by or authorized by the Defendants.

(4) No written Consent. Defendants argue that at no time did the Defendants give consent in writing to the Plaintiff or any of their officers to be served by electronic transmission in their service of Notice to seek Default Judgment.

(5) No Service made on Defendant's place of abode with someone of suitable age and discretion who live there. The Defendant ("Thomas") also argue that the Plaintiff did not leave any notices at Defendant's place of abode with someone of suitable age and discretion who lives there since Defendant Delsa U. Thomas is single and lives alone. If Plaintiff left Notice to seek Default Judgment at ("Thomas") place of abode, it would have to conform to the guidelines

pursuant to Rule 5 of the Federal Rules of Civil Procedure, which would then ensure that Notice of Service to seek Default Judgment would have officially been left with (“Thomas”) herself. This was not done.

(6) No authorization given in writing to a designated Agency. Defendants argue that at no time has authorization or consent in writing been given to a designated agency to receive, sign, collect or act as agent, employee or clerk concerning receiving registered or certified mail or to act as signatory agent in the process of service, on behalf of the Defendants, by the Plaintiff or any other regulatory body of the United States Government.

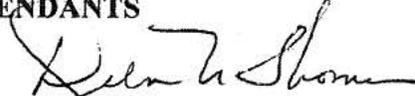
III. **CONCLUSION SUMMARY**

While the Plaintiff made assumption that leaving a Notice to seek Default Judgment with unauthorized individuals or assuming that it was “okay” as long as there was a signature on the receipt was correct, the fact remains that the method and the process that was employed by the Plaintiff in service of the Defendant was a gross misjudgment and direct violation of the Defendants right to be notified when legal action is being sought against them. In addition, it is clear that the Plaintiff’s “slack hand” and mishandling of service, in this matter was in direct violation of Rule 5 of the Federal Rules of Civil Procedures for how service is made. It is easy to conclude that the Plaintiff actions contributed to the Defendants ultimately receiving this Default Judgment. The Plaintiff made an egregious error in the process of service of the Notice to Seek Default Judgment to the Defendants which clearly demonstrates the exceptional circumstances that exist in this matter and render the Default Judgment against the Defendants manifestly unjust. It is with these conclusions and prevailing facts that this Motion to Vacate Default Judgment must be granted.

Signed this 14th day of August 2014.

Respectfully submitted,

**DELSA U. THOMAS, THE D. CHRISTOPHER
CAPITAL MANAGEMENT GROUP LLC,
AND THE SOLOMON FUND, L.P.
DEFENDANTS**



By: /s/ Delsa U. Thomas

Delsa U. Thomas

Delsa.Thomas@DCCMG.com

545 E. John Carpenter Freeway, Suite 300
Dallas, Texas 75062
(972) 719-9001 Telephone
(972) 719-9195 Facsimile

**FOR DEFENDANTS DELSA U. THOMAS
THE D. CHRISTOPHER CAPITAL
MANAGEMENT GROUP, LLC and
THE SOLOMON FUND, L.P.**

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2014, a true and correct copy of the foregoing was sent in the manner indicated below upon the following:

SUBMITTED TO COURT CLERK

Honorable Sam A. Lindsay
United States District Judge
1100 Commerce Street, Room 1452
Dallas, TX 75242

SUBMITTED TO COURT CLERK

FOR AND FILING TO

Jessica B. Magee, Esq.
Fort Worth Regional Office
United States Securities and Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, Texas 76102

**SUBMITTED TO COURT CLERK FOR
FILING**

1100 Commerce Street, Room 1452
Dallas, TX 75242



/s/ Delsa U. Thomas

Delsa U. Thomas

1179504_1.DOCX

House Rules



These are our House Rules which may change from time to time and apply to all Regus Management group facilities operating under different names (Regus, HQ, Stratis, etc.).

Accommodation

1. Upon move in: We may ask you to sign an inventory of all accommodation, furniture and equipment you are permitted to use, together with a note of its condition, and details of the keys or entry cards issued to you.
2. You may not put up any signs on the doors of your accommodation or anywhere else that is visible from outside the rooms you are using without written approval from the local Center team (acting reasonably).
3. Taking care of our property: You must take good care of all parts of the Business Center, its equipment, fittings and furnishings that you use. You must not alter any part of it.
4. Keys and security: Any keys or entry cards which we let you use remain our property at all times. You must not make any copies of the keys and/or entry cards or allow anyone else to use them without our consent. Any loss must be reported to us immediately and you must pay a reasonable fee for replacement keys or cards and of changing locks, if required. This rule improves security levels of the Business Center. If you are permitted to use the Business Center outside normal working hours it is your responsibility to lock the doors to your accommodation and to the Business Center when you leave. This is to ensure the safety of individuals and property at the Business Center.

Use

5. You shall not leave open any corridor doors, exit doors or door connecting corridors during or after business hours. All corridors, halls, elevators and stairways shall not be obstructed by you or used for any purpose other than egress and ingress. You can only use public areas with the consent of REGUS and those areas must be kept neat and attractive at all times.
6. Your name and address: At your request and cost we are happy to include that name in the house directory at the Business Center, where this facility is available. You must not use the name Regus, or HQ Global Workplaces or Stratis or the specific brand name of the center you are using in any way in connection with your business. You may not use the Business Center as your registered address for service-of-process.
7. Your phone number: You agree that the phone number(s) assigned to you are for your use during the term of your agreement. The phone numbers remain the property of Regus and you have no contractual or vested interests in the present telephone service, telephone system, or telephone numbers provided by Regus. If you choose to have the phone number listed in the local 411 or directory assistance, you authorize Regus to procure and arrange this listing for you and you agree to pay any fees for such listing. You agree not to list the phone number in any "white or yellow" pages.
8. You and your employees and guests shall conduct yourselves in a businesslike manner; proper business attire shall be worn at all times; the noise level will be kept to a level so as not to interfere with or annoy other clients and You will abide by REGUS directives regarding security, keys, parking and other such matters common to all occupants. No part of the office or Regus Business Center may be used for overnight accommodation.
9. You shall not, without REGUS prior written consent, store or operate in the workstation(s) or the REGUS Business Center any computer (excepting a personal computer) or any other large business machine, reproduction equipment, heating equipment, stove, radio, stereo equipment or other mechanical amplification equipment, vending or coin operated machine, refrigerator or coffee equipment. Additionally, you must not conduct a mechanical business therein, do any cooking therein, or use or allow to be used in the Building, oil burning fluids, gasoline, kerosene for heating, warming or lighting. No article deemed hazardous on account of fire or any explosives shall be brought into the REGUS business center. No offensive gases, odors or liquids shall be permitted. No firearms shall be permitted. The Business Center is intended to be used solely for office use.
10. The electrical current shall be used for ordinary lighting, powering personal computers and small appliances only unless written permission to do otherwise shall first have been obtained from REGUS at an agreed cost to You. If You require any special installation or wiring for electrical use, telephone equipment or otherwise, such wiring shall be done at Your expense by the personnel designated by REGUS.
11. You may not conduct business in the hallways, reception area or any other area except in its designated office without the prior written consent of REGUS.
12. You shall bring no animals into the Building other than certified assistance animals which are being used solely for the purposes of such certification.
13. Kitchen Amenities / Beverage Fee allows clients and visitors access to self-service coffee and tea. This fee is mandatory and will be charged per office occupant.
14. You shall not use the REGUS Business Center for manufacturing or storage of merchandise except as such storage may be incidental to general office purposes. Client shall not occupy or permit any portion of the REGUS business center to be occupied or used for the manufacture, sale, gift or use of liquor, narcotics or tobacco in any form.
15. No additional locks or bolts of any kind shall be placed upon any of the doors or windows of the REGUS Business Center by You nor shall any changes be made to existing locks or the mechanisms thereof.
16. Canvassing, soliciting and peddling in the Building are prohibited and You shall not solicit other clients for any business or other purpose without the prior written approval of REGUS.
17. All property belonging to You or any employee, agent or invitee shall be at the risk of such person only and REGUS shall not be liable for damages thereto or for theft or misappropriation thereof.



44.1.6. Security Violations. Clients are prohibited from engaging in any violations of system or network security. The RegusNet Internet access may not be used in connection with attempts - whether or not successful - to violate the security of a network, service, or other system. Examples of prohibited activities include, without limitation hacking, cracking into, monitoring, or using systems without authorization; scanning ports; conducting denial of service attacks; and distributing viruses or other harmful software. Regus reserves the right to suspend RegusNet Internet access upon notification from a recognized Internet authority or ISP regarding such abuse. We may disconnect your equipment and withhold services if we consider that your hardware or software is, or has become, inappropriate for connection to our network or otherwise violates these Rules.

44.1.7. Clients are responsible for their own virus protection on their systems and hardware and are expected to keep the AV software current with the latest virus definition files.

44.1.8. RegusNet services are only available at Regus business centers and connection to our network is only permitted at those centers or via Regus provided services. Clients must not create any links between our network and any other network or any telecommunications service without our consent.

44.1.9. Regus requests that all clients will provide, as and when requested by us, documentation and personnel information as we may reasonably require to assist in the provision of the services.

44.1.10. Revisions to this Policy. Regus may modify this Policy at any time, with or without notice.

44.1.11. Special Requirements - Clients using their own wireless access points require written approval from Regus, prior to implementation and is only an option in locations where Regus does not currently offer Wireless Service. When Regus deploys Wireless services, the Client Wireless solution will need to be removed fully as to not interfere with Regus WiFi solution. Wireless accounts on the Regus WiFi solution will be made available to users of the Client who subscribe to either RegusNet or RegusNet Dedicated. The use of a clients own wireless router will result in a service charge based upon the total number of contracted work stations in a clients designated office space.

44.1.12 VOIP phones or softphones (PC based VoIP applications) are not allowed on the RegusNet Service. They are only allowed on RegusNet Dedicated, with Regus IT approval.

44.1.13 Video conferencing services are not allowed on the RegusNet Service. This is only allowed on RegusNet Dedicated, with Regus IT approval.

44.1.14 DISCLAIMER OF LIABILITY FOR THIRD PARTY PRODUCTS - As part of its services to Client, Regus may provide third party Internet access and computer hardware and software ("Third Party Services"). REGUS DISCLAIMS ANY AND ALL LIABILITY, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES, WHETHER ORAL OR WRITTEN, FOR SUCH THIRD PARTY SERVICES. CLIENT ACKNOWLEDGES THAT NO REPRESENTATION HAS BEEN MADE BY REGUS AS TO THE FITNESS OF THE THIRD PARTY SERVICES FOR CLIENT'S INTENDED PURPOSE.

44.1.15 DISCLAIMER OF LIABILITY FOR CLIENT EQUIPMENT - ALL CLIENT EQUIPMENT STORED IN THE REGUS TELECOMMUNICATIONS ROOM IS STORED AT CLIENT'S OWN RISK. REGUS DISCLAIMS ANY AND ALL LIABILITY FOR SUCH EQUIPMENT AND SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGE TO SUCH EQUIPMENT.

44.1.16 DISCLAIMER OF CONSEQUENTIAL DAMAGES FROM LOSS OF SERVICE - Regus does not provide any service level agreement to our clients in regard to provision or loss of service for its RegusNet services. Regus shall not be liable for any indirect, special, incidental, punitive, or consequential damages, including lost profits, arising out or resulting from any loss of service or degradation of connectivity / access to the Internet with this Agreement, even if the other party has been advised of the possibility of such damages. The foregoing shall apply, to the fullest extent permitted by law, regardless of the negligence or other fault of either party.

44.1.17 DISCLAIMER OF CONSEQUENTIAL DAMAGES - Regus shall not be liable for any indirect, special, incidental, punitive, or consequential damages, including lost profits, arising out or resulting from this Agreement even if the other party has been advised of the possibility of such damages. The foregoing shall apply, to the fullest extent permitted by law, regardless of the negligence or other fault of either party.

USPS Regulations

45) You acknowledge that REGUS will comply with the USPS regulations regarding your mail. You must also comply with all USPS regulations. Failure to comply will result in immediate termination of this Agreement.

46) If this Agreement is for a Mailbox Plus program, you must complete a separate U.S. Postal Service Form 1583 ("Form 1583") to receive mail and/or packages at the Center. You acknowledge that this Agreement and Form 1583 may be disclosed upon request of any law enforcement or other governmental agency, or when legally mandated. You must use the exact mailing address, inclusive of the Private Mailbox designation, without modification as set forth in Section Three (3) of Form 1583. Your mail must bear a delivery address that contains at least the following elements, in this order, (i) Intended addressee's name or other identification, (ii) Street number and name, (iii) secondary address, (iv) "PMB" or # and your designated PMB number, and (v) City, State and ZIP Code (5-digit or ZIP+4). USPS may return mail to the sender without a proper address. You agree not to file a change of address form with the US Post Office when your agreement ends.

1. This Agreement

1.1 Nature of this agreement: This agreement is the commercial equivalent of an agreement for accommodation(s) in a hotel. The whole of the Center remains in Regus' possession and control. THE CLIENT ACCEPTS THAT THIS AGREEMENT CREATES NO TENANCY INTEREST, LEASEHOLD ESTATE OR OTHER REAL PROPERTY INTEREST IN THE CLIENT'S FAVOUR WITH RESPECT TO THE ACCOMMODATION(S). Regus is giving the Client the right to share with Regus the use of the Center on these terms and conditions, as supplemented by the House Rules, so that Regus can provide the services to the Client. This agreement is personal to the Client and cannot be transferred to anyone else. This agreement is composed of the front page describing the accommodation(s), the present terms and conditions and the House Rules.

1.2 Comply with House Rules: The Client must comply with any House Rules which Regus imposes generally on users of the Center. The House Rules vary from country to country and from Center to Center and these can be requested locally.

1.3 Duration: This agreement lasts for the period stated in it and then will be extended automatically for successive periods equal to the current term but no less than 3 months (unless legal renewal term limits apply) until brought to an end by the Client or by Regus. All periods shall run to the last day of the month in which they would otherwise expire. The fees on any renewal will be at the then prevailing market rate.

1.4 Bringing this agreement to an end: Either Regus or the Client can terminate this agreement at the end date stated in it, or at the end of any extension or renewal period, by giving at least three months written notice to the other. However, if this agreement, extension or renewal is for three months or less and either Regus or the Client wishes to terminate it, the notice period is two months or (if two months or shorter) one week less than the period stated in this agreement.

1.5 Ending this agreement immediately: To the maximum extent permitted by applicable law, Regus may put an end to this agreement immediately by giving the Client notice and without need to follow any additional procedure if (a) the Client becomes insolvent, bankrupt, goes into liquidation or becomes unable to pay its debts as they fall due, or (b) the Client is in breach of one of its obligations which cannot be put right or which Regus has given the Client notice to put right and which the Client has failed to put right within fourteen (14) days of that notice, or (c) its conduct, or that of someone at the Center with its permission or invitation, is incompatible with ordinary office use.

If Regus puts an end to this agreement for any of these reasons it does not put an end to any outstanding obligations, including additional services used and the monthly office fee for the remainder of the period for which this agreement would have lasted if Regus had not ended it.

1.6 If the Center is no longer available: In the event that Regus is permanently unable to provide the services and accommodation(s) at the Center stated in this agreement then this agreement will end and the Client will only have to pay monthly office fees up to the date it ends and for the additional services the Client has used. Regus will try to find suitable alternative accommodation(s) for the Client at another Regus Center.

1.7 When this agreement ends the Client is to vacate the accommodation(s) immediately, leaving the accommodation(s) in the same condition as it was when the Client took it. Upon the Client's departure or if the Client, at its option, chooses to relocate to different rooms within the Centre, Regus will charge an Office Restoration Service fee to cover normal cleaning and testing and to return the accommodation(s) to its original state. This fee will differ by country and is listed in the House Rules. Regus reserves the right to charge additional reasonable fees for any repairs needed above and beyond normal wear and tear. If the Client leaves any property in the Centre Regus may dispose of it at the Client's cost in any way Regus chooses without owing the Client any responsibility for it or any proceeds of sale. When a Client vacates its accommodation(s) invariably Regus continues to receive the Client's mail, faxes, telephone calls and visitors. In order to professionally manage the redirection of the Client's calls, mail, faxes and visitors Regus charges a one-time Business Continuity Service. This service lasts for three months after the end of the date of this agreement. If in the event that there are no calls, mail, faxes or visitors this service will not be applied. This fee is located in the house rules.

If the Client continues to use the accommodation(s) when this agreement has ended the Client is responsible for any loss, claim or liability Regus incurs as a result of the Client's failure to vacate on time. Regus may, at its discretion, permit the Client an extension subject to a surcharge on the monthly office fee.

1.8 Employees: While this agreement is in force and for a period of six months after it ends, neither Regus nor the Client may knowingly solicit or offer employment to any of the other's staff employed in the Center. This obligation applies to any employee employed at the Center up to that employee's termination of employment, and for three months thereafter. It is stipulated that the breaching party shall pay the non-breaching party the equivalent of one year's salary for any employee concerned. Nothing in this clause shall prevent either party from employing an individual who responds in good faith and independently to an advertisement which is made to the public at large.

1.9 Client Representation of Regus Employees: Throughout the duration of this agreement, Client agrees that neither Client, nor any of Client's partners, members, officers or employees will represent, or otherwise provide legal counsel to, any of Regus' current or former employees in any dispute with, or legal proceeding against, Regus, or any of Regus' affiliates, members, officers or employees.

1.10 Notices: All formal notices must be in writing to the address first written above.

1.11 Confidentiality: The terms of this agreement are confidential. Neither Regus nor the Client must disclose them without the other's consent unless required to do so by law or an official authority. This obligation continues after this agreement ends.

1.12 Applicable law: This agreement is interpreted and enforced in accordance with the law of the place where the relevant Centre is located. Regus and the Client both accept the exclusive jurisdiction of the courts of such jurisdiction. If any provision of these terms and conditions is held void or unenforceable under the applicable law, the other provisions shall remain in force. In the case of Japan all agreements will be interpreted and enforced by the Tokyo District Court, and in the case of France, any dispute regarding this agreement will be settled by the relevant courts of the Paris jurisdiction.

1.13 Enforcing this agreement: The Client must pay any reasonable and proper costs including legal fees that Regus incurs in enforcing this agreement.

2. Services and Obligations

2.1 Furnished office accommodation(s): Regus is to provide the number of serviced and furnished office accommodation(s) for which the Client has agreed to pay in the Center stated in this agreement. This agreement lists the accommodation(s) Regus has initially allocated for the Client's use. The Client will have a non-exclusive right to the rooms allocated to it. Occasionally Regus may need to allocate different accommodation(s), but these accommodation(s) will be of reasonably equivalent size and Regus will notify the Client with respect to such different accommodation(s) in advance.

2.2 Office Services: Regus is to provide during normal opening hours the services, if requested, described in the relevant service description (which is available on request). If Regus decides that a request for any particular service is excessive, it reserves the right to charge an additional fee.

2.3 REGUSNET: REGUS DOES NOT MAKE ANY REPRESENTATIONS AS TO THE SECURITY OF REGUS' NETWORK (OR THE INTERNET) OR OF ANY INFORMATION THAT THE CLIENT PLACES ON IT. The Client should adopt whatever security measures (such as encryption) it believes are appropriate to its circumstances. Regus cannot guarantee that a particular degree of availability will be attained in connection with the Client's use of Regus' network (or the Internet). The Client's sole and exclusive remedy shall be the remedy of such failure by Regus within a reasonable time after written notice.

3. Providing the Services

3.1 Access to the accommodation(s): Regus may need to enter the Client's accommodation(s) and may do so at any time. However, unless there is an emergency or the Client has given notice to terminate, Regus will attempt to notify the Client verbally or electronically in advance when Regus needs access to carry out testing, repair or works other than routine inspection, cleaning and maintenance. Regus will also endeavor to respect reasonable security procedures to protect the confidentiality of the Client's business.

3.2 Availability at the start of this agreement: If for any reason Regus cannot provide the accommodation(s) stated in this agreement by the date when this agreement is due to start it has no liability to the Client for any loss or damages but the Client may cancel this agreement without penalty. Regus will not charge the Client the monthly office fee for accommodation(s) the Client cannot use until it becomes available. Regus may delay the start date of this agreement provided it provides to the Client alternative accommodation(s) that shall be at least of equivalent size to the accommodation(s) stated in this agreement.

4. Accommodation(s)

4.1 The Client must not alter any part of its accommodation and must take good care of all parts of the Center, its equipment, fixtures, fittings and furnishings which the Client uses. The Client is liable for any damage caused by it or those in the Center with the Client's permission or at the Client's invitation whether express or implied, including but not limited to all employees, contractors, agents or other persons present on the premises.

4.2 Office furniture and equipment: The Client must not install any cabling, IT or telecom connections without Regus' consent, which Regus may refuse at its absolute discretion. As a condition to Regus' consent, the Client must permit Regus to oversee any installations (for example IT or electrical systems) and to verify that such installations do not interfere with the use of the accommodation(s) by other Clients or Regus or any landlord of the building.

4.3 Insurance: It is the Client's responsibility to arrange insurance for its own property which it brings in to the Center and for its own liability to its employees and to third parties. Regus strongly recommends that the Client put such insurance in place.

5. Use

5.1 The Client must only use the accommodation(s) for office purposes. Office use of a "retail" or "medical" nature, involving frequent visits by members of the public, is not permitted.

5.2 The Client must not carry on a business that competes with Regus' business of providing serviced office accommodation(s).

5.3 The Client's name and address: The Client may only carry on that business in its name or some other name that Regus previously agrees.

5.4 Use of the Center Address: The Client may use the Center address as its business address. Any other uses are prohibited without Regus' prior written consent.

6. Compliance

6.1 Comply with the law: The Client must comply with all relevant laws and regulations in the conduct of its business. The Client must do nothing illegal in connection with its use of the Business Center. The Client must not do anything that may interfere with the use of the Center by Regus or by others, cause any nuisance or annoyance, increase the insurance premiums Regus has to pay, or cause loss or damage to Regus (including damage to reputation) or to the owner of any interest in the building which contains the Center the Client is using. The Client acknowledges that (a) the terms of the foregoing sentence are a material inducement in Regus' execution of this agreement and (b) any violation by the Client of the foregoing sentence shall constitute a material default by the Client hereunder, entitling Regus to terminate this agreement, without further notice or procedure.

6.2 The Client's personal data may be transferred outside the European Union where Regus has a Center for the purposes of providing the services herein. Regus has adopted internal rules to ensure data protection in accordance with European regulations.

7. Regus' Liability

7.1 The extent of Regus' liability: To the maximum extent permitted by applicable law, Regus is not liable to the Client in respect of any loss or damage the Client suffers in connection with this agreement, with the services or with the Client's accommodation(s) unless Regus has acted deliberately or negligently in causing that loss or damage. Regus is not liable for any loss as a result of Regus' failure to provide a service as a result of mechanical breakdown, strike, termination of Regus' interest in the building containing the Center or otherwise unless Regus does so deliberately or is negligent. In no event shall Regus be liable for any loss or damage until the Client provides Regus written notice and gives Regus a reasonable time to put it right. If Regus is liable for failing to provide the Client with any service under this agreement then subject to the exclusions and limits set out immediately below Regus will pay any actual and reasonable expenses the Client has incurred in obtaining that service from an alternative source. If the Client believes Regus has failed to deliver a service consistent with these terms and conditions the Client shall provide Regus written notice of such failure and give Regus a reasonable period to put it right.

7.2 EXCLUSION OF CONSEQUENTIAL LOSSES, ETC.: REGUS WILL NOT IN ANY CIRCUMSTANCES HAVE ANY LIABILITY FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF ANTICIPATED SAVINGS, LOSS OF OR DAMAGE TO DATA, THIRD PARTY CLAIMS OR ANY CONSEQUENTIAL LOSS UNLESS REGUS OTHERWISE AGREES IN WRITING. REGUS STRONGLY ADVISES THE CLIENT TO INSURE AGAINST ALL SUCH POTENTIAL LOSS, DAMAGE, EXPENSE OR LIABILITY.

7.3 Financial limits to Regus' liability: In all cases, Regus' liability to the Client is subject to the following limits:

- Without limit for personal injury or death;
- Up to a maximum of £1 million / USD\$2 million / €1.3 million (or local equivalent) for any one event or series of connected events for damage to the Client's personal property except in Turkey where it will be up to a maximum of the monthly office fee over the current term;
- Up to a maximum equal to 125% of the total fees paid between the date the Client moved into its accommodation(s) and the date on which the claim in question arises or £50,000 / USD\$100,000 / €66,000 (or local equivalent) whichever is the higher, in respect of any other loss or damage except in Turkey where it will be up to a maximum of the monthly office fee over the current term.

8. Fees

8.1 Taxes and duty charges: The Client agrees to pay promptly (i) all sales, use, excise, consumption and any other taxes and license fees which it is required to pay to any governmental authority (and, at Regus' request, will provide to Regus evidence of such payment) and (ii) any taxes paid by Regus to any governmental authority that are attributable to the accommodation(s), including, without limitation, any gross receipts, rent and occupancy taxes, tangible personal property taxes, stamp tax or other documentary taxes and fees.

8.2 Service Retainer/Deposit: The Client will be required to pay a service retainer/deposit equivalent to two months' of the monthly office fee (plus VAT/Tax where applicable) upon entering into this agreement unless a greater amount is specified on the front of this agreement. This will be held by Regus without generating interest as security for performance of all the Client's obligations under this agreement. The service retainer/deposit or any balance after deducting outstanding fees, the Business Continuity and Office Restoration Service and other costs due to Regus, will be returned to the Client after the Client has settled its account with Regus and funds have been cleared.

8.3 Regus may require the Client to pay an increased retainer if outstanding fees exceed the service retainer/deposit held and/or the Client frequently fails to pay Regus when due.

8.4 The Client will be charged an office set up fee per occupant. Fee amounts are located in the House Rules which can be requested at any time.

8.5 Late payment: If the Client does not pay fees when due, a fee will be charged on all overdue balances. This fee will differ by country and is listed in the House Rules. If the Client disputes any part of an invoice the Client must pay the amount not in dispute by the due date or be subject to late fees. Regus also reserves the right to withhold services (including for the avoidance of doubt, denying the Client access to its accommodation(s)) while there are any outstanding fees and/or interest or the Client is in breach of this agreement.

8.6 Payment: Regus is continually striving to reduce its environmental impact and supports its clients in doing the same. Therefore Regus will send all invoices electronically (where allowed by law) and the Client will make payments via an automated method such as Direct Debit or Credit Card, wherever local banking systems permit.

8.7 Insufficient Funds: The Client will pay a fee for any returned check or any other declined payments due to insufficient funds. This fee will differ by country and is listed in the House Rules.

8.8 Regus will increase the monthly office fee each and every anniversary of the start date of this agreement by a percentage amount equal to the increase in the All Items Retail Prices Index, or such other broadly equivalent index which Regus substitutes provided that the foregoing increase is not permitted by applicable law, then the monthly office fee shall be increased as specified in the House Rules. This will only apply to agreements that have an original start and end date constituting more than a 12 month term. Renewals will be renewed as per clause 1.3 above and only those renewals with a start and end date constituting a term of over 12 months will have the same increase applied.

8.9 Standard services: The monthly office fee and any recurring services requested by the Client are payable monthly in advance. Unless otherwise agreed in writing, these recurring services will be provided by Regus at the specified rates for the duration of this Agreement (including any renewal). Specific due dates will differ by country and are listed in the House Rules. Where a daily rate applies, the charge for any such month will be 30 times the daily fee. For a period of less than a month the fee will be applied on a daily basis.

8.10 Pay-as-you-use and Additional Variable Services: Fees for pay-as-you-use services, plus applicable taxes, in accordance with Regus' published rates which may change from time to time, are invoiced in arrears and payable the month following the calendar month in which the additional services were provided. Specific due dates will differ by country and are listed in the House Rules.

8.11 Discounts, Promotions and Offers: If the Client benefited from a special discount, promotion or offer, Regus may discontinue that discount, promotion or offer without notice if the Client breaches these terms and conditions or becomes past due on two or more occasions.

(EXHIBIT C) APP480

DECLARATION UNDER PENALTY OF PERJURY

“I Delsa Ulrica Thomas declare under penalty of perjury that the foregoing is true and correct.”

EXECUTED on August 14, 2014.

A handwritten signature in cursive script, reading "Delsa Ulrica Thomas", is written over a horizontal line.

Delsa Ulrica Thomas

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, §
§
Plaintiff, §
v. §
DELSA U. THOMAS, §
THE D. CHRISTOPHER CAPITAL §
MANAGEMENT GROUP, LLC, and §
THE SOLOMON FUND, LP §
Defendants. §

Case No. 3:13-cv-00739-L

**PLAINTIFF’S RESPONSE IN OPPOSITION TO MOTION TO
VACATE DEFAULT JUDGMENT AND BRIEF IN SUPPORT**

Plaintiff Securities and Exchange Commission (“Commission”) asks the Court to deny Defendants’ Motion to Vacate Default Judgment (“Motion”) [Doc. 15], filed without conference, and respectfully shows the following:

**I.
SUMMARY OF OPPOSITION**

Defendants Delsa U. Thomas (“Thomas”), The D. Christopher Capital Management Group, LLC (“DCCMG”), and The Solomon Fund, LP (“Solomon Fund”) (collectively, “Defendants”) ask the Court to vacate its final default judgment (“Judgment”) against them based on a false claim that they were improperly served with the Commission’s Motion for Default Judgment. Because Defendants were timely and properly served through Thomas, and because their effort to vacate this Court’s Judgment is merely a last-ditch effort to avoid statutorily-authorized sanctions in an ongoing administrative proceeding pending before the Commission, their Motion should be denied and the Judgment retained.

II.
ARGUMENT AND AUTHORITY

A. DEFENDANTS PROVIDE NO BASIS FOR VACATING THE JUDGMENT UNDER RULE 60(B)(6) OR OTHERWISE.

Federal Rule of Civil Procedure 60(b)(6) authorizes district courts to set aside a final judgment when “extraordinary” circumstances justify such relief. *United States ex rel. Garibalidi v. Orleans Parish Sch. Bd.*, 397 F.3d 334, 337 (5th Cir. 2005); *see also Quilling v. Schonsky*, 2007 U.S. Dist. LEXIS 16028 (N.D. Tex. Mar. 6, 2007) (extraordinary circumstances were absent where Defendant had notice of motion for summary judgment despite assertions to the contrary). It is well-settled that the availability of relief under Rule 60(b)(6) is “narrowly circumscribed.” *United States v. Burrell*, 2008 U.S. App. LEXIS 1164 (5th Cir. 2008) (*quoting Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 747 (5th Cir. 1995)). Furthermore, “vacatur of a default judgment is subject to the explicit provisions of Rule 60(b), which places additional restraints upon the Court’s discretion and is a higher standard than the “good cause” needed to set aside entry of default under Rule 55(c).” *Alfarouqi v. Tri-Speed Inv., Inc.*, Civ. Action No. 3:12–CV–3836–L, 2013 WL 5314436 (N.D. Tex. Sept. 23, 2013).

In *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396 (5th Cir. 1981), the Fifth Circuit set forth the following factors to consider when evaluating a motion under Rule 60(b)(6): (1) that final judgments should not lightly be disturbed; (2) that a Rule 60(b) motion should not be used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether, if the case was not decided on its merits due to a default or dismissal, the interest in deciding the case on its merits outweighs the interest in the finality of the judgment and there is merit in the claim or defense; (5) whether, if the judgment was rendered on the merits, the movant had a fair opportunity to present his claims; (6) whether there are intervening

equities that would make it inequitable to grant relief; and (7) any other factors relevant to the justice of the judgment under attack. *Id.* at 402.

Defendants fail to cite any of the *Seven Elves* factors, much less persuasively establish that they weigh in favor of setting the Judgment aside. Rather, there are no extraordinary circumstances in this action to support vacating the Judgment, and to set the Judgment aside when Defendants have made no showing that doing so would achieve substantial justice – or even a different result than that already reached – would unfairly prejudice the Commission and unnecessarily require the Commission and Court to invest further time and resources in this properly concluded action. Thus, because the circumstances reveal that Defendants willfully ignored these proceedings for more than a year and only now seek to set Judgment aside based on a blatant misrepresentation of the facts in an effort to avoid sanctions in administrative proceedings pending against Thomas and DCCMG, their Motion should be denied.

B. DEFENDANTS CONCEDE THAT SERVICE OF PROCESS WAS PROPER.

The purpose of FED. R. CIV. P. 5 is to prevent unconscionable default where a defendant's once-known address is succeeded by later one to which the plaintiff knows defendant has moved. *See Bowers v E. J. Rose Mfg. Co.*, 149 F2d 612 (9th Cir. 1945). It is undisputed that at all relevant times, and today, Thomas's residential address has been 5862 Foxglove Lane, Dallas, Texas 75249. *See* Exhibit A, Declaration of Jessica B. Magee ("Magee Declaration"), at ¶ 3. Indeed, each of the three Defendants in this action was properly served the summons and complaint at Thomas's residential address on Foxglove Lane.¹ *Id.*, at ¶ 4; Doc. 5. Importantly, the summons served on each Defendant expressly notified the party that "if you fail to respond,

¹ It is undisputed that service on DCCMG and The Solomon Fund through Thomas, at Thomas's residence, was appropriate and effective because Thomas "is the sole principal of...DCCMG and [The] Solomon [Fund]," which point Defendants themselves assert in their underlying Motion. *See* Motion, at p. 3.

judgment by default will be entered against you for the relief demanded in the complaint.” See Doc. 5, at pp. 2, 4, 6.

C. THE COMMISSION PROPERLY SERVED ITS APPLICATION FOR CLERK’S ENTRY OF DEFAULT AND MOTION FOR DEFAULT JUDGMENT ON DEFENDANTS.

On March 4, 2014, the Court concluded that, after being served with process on February 19, 2013, Defendants failed to answer or otherwise respond to the Complaint or make any effort to defend this action for more than a year during which the action was pending. See Doc. 12, at p. 3. “When the court finds an intentional failure of responsive pleadings there need be no other finding” to justify default judgment. *Matter of Dierschke*, 975 F.2d 181, 184 (5th Cir. 1992). Consequently, the Court entered Judgment against all Defendants on March 4, 2014. See Doc. 13.

Defendants do not claim that the Judgment is void or that it should be set aside due to mistake, excusable neglect, or even the revelation of new evidence. Rather, and notwithstanding proper service of process upon them in this action, Defendants argue that Judgment should be vacated because “proper service of notice, by [the Commission], to seek default judgment was not made to Defendants prior to the default judgment being ordered.”² Motion, pp. 1-2. Hence Defendants do not claim they never received notice of the Commission’s efforts to secure default judgment, but only that notice was *improper*. In so arguing, they state that “[n]otice to seek default judgment was served to unauthorized individuals on behalf of the Defendants, without the Defendants’ knowledge.” Motion, at p. 3. Defendants go on to describe the purported

² Arguably, Defendants were not even entitled to notice of the Commission’s Motion for Default Judgment because they never answered or appeared in the action in a manner that clearly demonstrated any intent to defend against the claims. See *Cutting v Town of Allentown*, 936 F.2d 18 (1st Cir. 1991) (where defendants were served with summons and did not appear and answer within required period, they became parties in default for Rule 5(a) purposes; thus, defendants’ argument that notice of plaintiffs’ motion for default judgment was required under Rule 5(a) because at time it was made clerk had yet to enter default, is without merit.); *Taylor v Boston & Taunton Transp. Co.*, 720 F.2d 731 (1st Cir. 1983); *Town & Country Kids v Protected Venture Inv. Trust #1*, 178 FRD 453 (E.D.Va. 1998).

staffing structure and tenant requirements and prohibitions where DCCMG and Solomon Fund maintain their offices. *Id.* But Defendants boldly mislead the Court and provide no evidence to support their claim. In reality, the Commission served all documents filed in connection with its efforts to obtain default judgment not through Defendants' authorized representatives, or even at their place of business but, rather, by delivering such documents, via UPS mail, directly to Defendant Thomas at her residential address where all Defendants were successfully served with process herein. *See* Magee Declaration, at ¶ 5.

1. The Commission Notified Defendants of its Intent to Seek Default Judgment.

The Commission requested the clerk of this Court to enter Defendants' default on May 9, 2013. *See* Doc. 9. As evidenced by UPS delivery confirmation receipts, the Commission served its Application for Clerk's Entry of Default on all three Defendants, by UPS mail, at Thomas's residential address, where the Commission successfully served each Defendant with process herein. *See* Magee Declaration, at ¶ 6. Defendants never responded to that Application nor contacted the Commission regarding its filing. *Id.* The Clerk's Entry of Default was made on May 9, 2013. *See* Doc. 10.

2. The Commission Notified Defendants of its Motion for Default Judgment.

The Commission filed its Motion for Default Judgment, appendix in support thereof, and proposed final judgment on May 10, 2013. *See* Doc. 11. In the *Certificate of Service* submitted with that Motion, undersigned counsel certified that Defendants were served in a "manner authorized by Federal Rule of Civil [Procedure] 5(b)(2)." *See* Doc. 11, p. 22. Rule 5(b)(2) expressly authorizes service by "mailing it to the person's last known address – in which event service is complete upon mailing." *See* FED. R. CIV. P. 5(b)(2)(C). Indeed, as evidenced by UPS delivery confirmation receipts, the Commission separately served all three Defendants with its

Motion for Default Judgment and attached documents on May 14, 2013, by UPS mail, at Thomas's residential address where it previously successfully served each Defendant with process.³ See Magee Declaration, at ¶ 7. Defendants never responded to the Commission's Motion for Default Judgment or contacted the Commission in any manner regarding its filing – not even to confer on the filing of their underling Motion. *Id.*

3. Defendants Willfully Ignored the Commission's Motion for Default Judgment and the Court's Judgment for More Than a Year.

Importantly, the Commission's Motion for Default Judgment – which Defendants received on May 14, 2013 – was not granted until March 4, 2014. See Doc. 11, Doc. 12, Magee Declaration, at ¶ 7. Hence, Defendants not only received timely, proper notice of the default judgment motion, they made no effort to respond to it for *ten months* prior to the Court's Judgment and for another *five months* following its entry. See, e.g., *International Brands USA, Inc. v. Old St. Andrews Ltd.*, 349 F. Supp.2d 256, 261 (D. Conn. 2004) (“Where a party fails to respond, after notice, the court is ordinarily justified in entering a judgment against the defaulting party.”); *F.T.C. v. 1263523 Ontario, Inc.*, 205 F. Supp.2d 205, 208 (S.D.N.Y. 2002) (entering default judgment where defendants failed to respond in any way to summons, complaint and motion for default judgment).

Ultimately, while courts typically apply a three-factor test in considering whether to set aside a default judgment to determine (1) if the default was wilful; (2) if the adjudged defendant has any meritorious defense; and (3) if setting aside would prejudice the plaintiff, Defendants have not claimed – and the evidence clearly shows that they cannot claim – that any of these

³ See, e.g., *Capitol Records v Carmichael*, 508 F Supp. 2d 1079 (S.D. Ala. 2007). In *Capitol Records*, because the defendant failed to appear or otherwise acknowledge pendency of lawsuit against her for more than eight months after being served, entry of default judgment was appropriate. *Id.* And even though the plaintiff in that case did not serve defendant with notice of its efforts to secure default – which the Commission did in this case – any harm arising from the omission in *Capitol Records* was negated by the fact that the plaintiff mailed a copy of its motion for entry of default judgment to defendant at the address where service was perfected. *Id.*

factors weigh in their favor. In fact, because the willfulness of Defendants' default is so apparent, consideration of any other factors is unnecessary.⁴ See *Quilling v. Shaw*, No. 3-00-CV-1405-M, 2001 WL 513429 (N.D. Tex. May 9, 2001). In *Quilling*, the Northern District of Texas denied defendant's motion to set aside a default judgment because he "was aware that he had been sued but made no attempt to respond to allegations against him until after the entry of a default judgment." *Id.* In so concluding, the Court found no reason to assess the "good cause" factors because defendant's failure to answer the complaint constituted willful default. *Id.* Furthermore, the *Quilling* defendant's claim that he had no attorney and that he "did not understand" the complaint's language could not save him since "ignorance, carelessness, nor conscious indifference constitutes excusable neglect" under Rule 60(b). *Id.*

D. DEFENDANTS CHALLENGE THE JUDGMENT AS A LAST-MINUTE EFFORT TO AVOID STATUTORILY-AUTHORIZED SANCTIONS IN A PENDING ADMINISTRATIVE PROCEEDING.

Following entry of Judgment herein, the Commission issued an Order Instituting Proceedings against Thomas and DCCMG ("Respondents") to determine what remedies, if any, should be ordered against them under Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") as a result of the permanent injunctive relief ordered by this Court. See Magee Declaration, at ¶ 8.

In July 2014, the Commission's Division of Enforcement, represented by undersigned counsel, moved for summary disposition on its claims against Respondents in the administrative proceeding – similar to summary judgment under the federal rules of civil procedure – seeking an order permanently barring Thomas under Section 203(f) of the Advisers Act and revoking DCCMG's registration under Section 203(e) of the Advisers Act. *Id.*, at ¶ 9. Respondents failed

⁴ See also *McGrady v. D'Andrea Elec., Inc.*, 434 F.2d 1000, 1001 (5th Cir. 1970) ("The court should not reopen a default judgment merely because the party in default requests it, but should require the party to show both that there was good reason for the default and that he has a meritorious defense to the action.").

to timely respond to the Division of Enforcement's Motion for Summary Disposition in the administrative proceedings. *Id.*, at ¶ 10. Rather, Respondents belatedly opposed summary disposition on the basis that they have now challenged the propriety of the Judgment herein, albeit on false and misleading grounds. It is well-settled, however, that this Court's Judgment is immune from attack in the pending administrative proceedings. *See In the Matter of Gregory Bartko, Esq.*, Initial Decision Release No. 700, 2012 § LEXIS 1038 (Mar. 30, 2012) *aff'd*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *43-44 & nn.69-70 (Mar. 7, 2014) (collecting cases); *In the Matter of Locke Capital Management, Inc.*, Initial Decision Release No. 450 (February 6, 2012) 2012 SEC LEXIS 416 (findings and conclusions immune from attack where injunction was entered through default judgment), Exchange Act Release No. 3381 (March 9, 2012) 2012 SEC LEXIS 760; *In the Matter of Phillip J. Milligan*, Exchange Act Release No. 61790 (Mar. 26, 2010), 2010 SEC LEXIS 1163; *In the Matter of Ted Harold Westerfield*, Exchange Act Release No. 41126 (Mar. 1, 1999), 1999 SEC LEXIS n.22 (collecting cases).

III. **CONCLUSION**

Defendants' Motion is untrue, unpersuasive, and constitutes an improper effort to collaterally attack ongoing an administrative proceeding pending before the Commission. Consequently, Plaintiff Securities and Exchange Commission respectfully asks this Court to enter an order denying Defendants' Motion to Vacate Default Judgment.

Dated: August 18, 2014

Respectfully Submitted,

s/ Jessica B. Magee

Jessica B. Magee

Attorney-in-Charge

Texas Bar No. 00793931

Securities and Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
Telephone: (817) 978-6465 (Magee)
Fax: (817) 978-4927
mageej@sec.gov

COUNSEL FOR PLAINTIFF SECURITIES
AND EXCHANGE COMMISSION

CERTIFICATE OF SERVICE

On August 18, 2014, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Jessica B. Magee

Jessica B. Magee

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION, §

Plaintiff, §

v. §

Case No. 3:13-cv-00739-L

**DELSA U. THOMAS,
THE D. CHRISTOPHER CAPITAL
MANAGEMENT GROUP, LLC, and
THE SOLOMON FUND, LP**

Defendants. §

DECLARATION OF JESSICA B. MAGEE

Pursuant to 28 U.S.C. § 1746, I state and declare as follows:

1. I am, and have been since 2002, a licensed attorney in good standing with the State Bar of Texas. I currently serve as Senior Trial Counsel for Plaintiff Securities and Exchange Commission ("Commission"), in the agency's Division of Enforcement in the Fort Worth Regional Office in Fort Worth, Texas. I have been employed by the Commission since 2010.

2. I am the attorney of record for the Commission in the above-entitled cause, and I submit this declaration in support of the Commission's Response in Opposition to Defendants' Motion to Vacate Default Judgment and Brief in Support.

3. Attached hereto as Exhibit 1, and incorporated herein, is an excerpt of a LexisNexis public records report I requested on August 18, 2014, which indicates that Delsa U. Thomas's ("Thomas") address is [REDACTED]

4. In connection with the filing of the Commission's complaint in this action, the

Commission served the complaint and summons on Thomas, The D. Christopher Capital Management Group, LLC (“DCCMG”) and The Solomon Fund, LP (“Solomon Fund”) (collectively, “Defendants”), via process server, through Thomas individually and as the sole principal and actor for DCCMG and Solomon Fund. *See* Doc. 5, Proof of Service for Thomas, DCCMG and Solomon Fund. Such service was completed on February 19, 2013 by personally serving said documents to Thomas at [REDACTED]. *Id.*

5. The Commission served all documents it filed in connection with its efforts to obtain default judgment by delivering such documents, via UPS, directly to Defendant Thomas at the address where all Defendants were successfully served with process: [REDACTED].

6. The Commission filed its Application for Clerk’s Entry of Default on May 9, 2013. *See* Doc. 9. In accordance with its *Certificate of Service*, the Commission served its Application for Clerk’s Entry of Default on Thomas, DCCMG, and Solomon Fund, by UPS mail, at Thomas’s residential address where the Commission successfully served each Defendant with process herein: [REDACTED]. True and correct copies of the May 10, 2013 UPS delivery confirmation receipts for service of the Application for Clerk’s Entry of Default are attached hereto, collectively, as Exhibit 2, and incorporated herein. Defendants never responded to the Commission’s Application nor contacted the Commission in any manner regarding its filing.

7. The Commission filed its Motion for Default Judgment, appendix in support thereof and proposed final judgment on May 10, 2013. *See* Doc. 11. In the *Certificate of Service* submitted therewith, undersigned counsel certified that Defendants were served a copy of the motion in a “manner authorized by Federal Rule of Civil [Procedure] 5(b)(2).” *Id.* In accordance with its

Certificate of Service, the Commission served its Motion for Default Judgment, appendix in support thereof, and proposed final judgment on Thomas, DCCMG, and Solomon Fund, by UPS mail, at Thomas's residential address where the Commission successfully served each Defendant with process herein: [REDACTED]. True and correct copies of the May 14, 2013 UPS delivery confirmation receipts for service of said documents are attached hereto, collectively, as Exhibit 3, and incorporated herein. Defendants never responded to the Commission's Motion for Default Judgment nor contacted the Commission in any manner regarding its filing.

8. Following entry of Judgment herein, the Commission issued an Order Instituting Proceedings against Thomas and DCCMG ("Respondents") to determine what remedies, if any, should be ordered against them under Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") as a result of the permanent injunctive relief ordered as part of the Judgment. Attached hereto as Exhibit 4, and incorporated herein, is a true and correct copy of the Commission's Order Instituting Proceedings against Respondents.

9. In July 2014, the Commission's Division of Enforcement, represented by undersigned counsel, moved for summary disposition on its claims against Respondents – similar to summary judgment under the federal rules of civil procedure – seeking an order permanently barring Thomas under Section 203(f) of the Advisers Act and revoking DCCMG's registration under Section 203(e) of the Advisers Act. Attached hereto as Exhibit 5, and incorporated herein, is a true and correct copy of the Commission's Motion for Summary Disposition against Respondents in the pending administrative proceedings.

10. Respondents failed to timely respond to the Division of Enforcement's Motion for

Summary Disposition in the administrative proceedings. Attached hereto, collectively, as Exhibit 6, and incorporated herein, are true and correct copies of the Administrative Law Judge's Orders of August 11, 2014 and August 14, 2014.

I declare, under penalty of perjury, that the foregoing is true and correct, based on my personal knowledge, and that I am competent to such matters.

Dated: August 18, 2014



Jessica B. Magee

**EXHIBIT 1
TO MAGEE
DECLARATION**

1 OF 1 RECORD(S)

FOR INFORMATIONAL PURPOSES ONLY
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Date:8/18/2014
Report processed by:
SECURITIES & EXCHANGE COMMISSION US DEC|DIVISION OF ENFORCEMENT

Full Name	Address	County	Phone
THOMAS DELSA ULRICA	[REDACTED]	[REDACTED]	None Listed

ADDITIONAL PERSONAL INFORMATION

SSN	DOB	Gender	LexID(sm)
[REDACTED]	[REDACTED]		REDACTED

Subject Summary

Name Variations

- 1: DELSA, ULRICA
- 2: DELSA, V
- 3: THOMAS, D
- 4: THOMAS, DELSA
- 5: THOMAS, DELSA U
- 6: THOMAS, DELSA ULRICA
- 7: THOMAS, DELSA V

SSNs Summary

No.	SSN	State Iss.	Date Iss.	Warnings
	[REDACTED]			Most frequent SSN attributed to subject:

DOBs

Reported DOBs:
12/23/1962

Possible E-Mail Addresses

Address Summary - 48 records found

No.	Address
1:	[REDACTED]
2:	[REDACTED]
3:	[REDACTED]

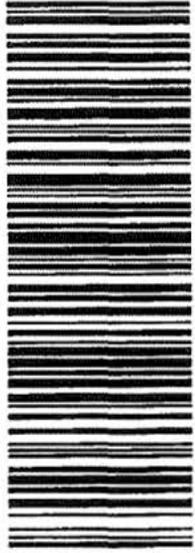
**EXHIBIT 2
TO MAGEE
DECLARATION**

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. Fold the printed sheet containing the label at the line so that the entire shipping label is visible. Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
 UPS locations include the UPS Store®, UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.
 Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
 Hand the package to any UPS driver in your area.
 Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup
Your driver will pickup your shipment(s) as usual.

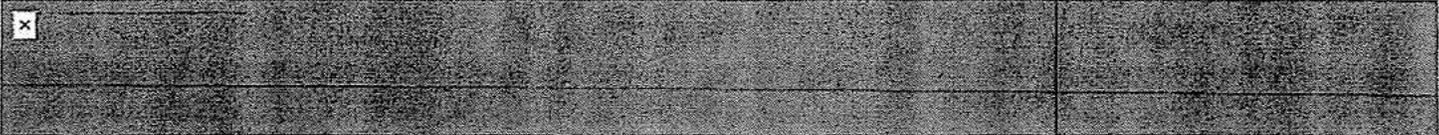
FOLD HERE

<p>REBECCA FAIRCHILD 817-900-2608 SEC-FORT WORTH 801 CHERRY ST FORT WORTH TX 76102</p> <p>SHIP TO:</p> <div style="background-color: black; width: 100px; height: 50px; margin-top: 10px;"></div>	<p>1.0 LBS LTR</p> <p>1 OF 1</p>	<p>TX 752 9-62</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z A37 81X 01 9246 8045</p> <p>1</p> 	<p>BILLING: P/P</p> <p>Reference # 1: FW-3718 Reference # 2: COS 9</p> <p>CS 1S.1.10. WNTB80 36.0A.04/2013</p> 
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APP499

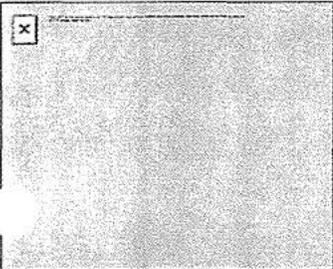
Fairchild, Rebecca R.

From: UPS Quantum View <auto-notify@ups.com>
Sent: Monday, May 13, 2013 10:12 AM
To: Fairchild, Rebecca R.
Subject: UPS Delivery Notification, Tracking Number 1ZA3781X0192468045



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At the request of SEC-FORT WORTH, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: [1ZA3781X0192468045](#)
Delivery Date / Time: 13-May-2013 / 9:47 AM

Driver Release Location: FRONT DOOR

Shipment Detail

Ship To:
Delsa U. Thomas
Delsa U. Thomas



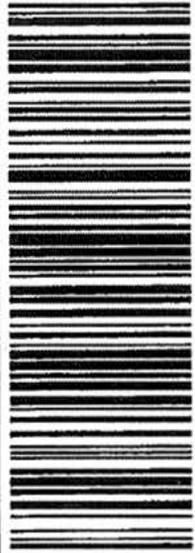
Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 1.0 LBS
Reference Number 1: FW-3718
Reference Number 2: COS 9

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. Fold the printed sheet containing the label at the line so that the entire shipping label is visible. Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
 UPS locations include the UPS Store®, UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.
 Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
 Hand the package to any UPS driver in your area:
 Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

FOLD HERE

REBECCA FAIRCHILD 817-900-2608 SEC. FORT WORTH 801 CHERRY ST. FORT WORTH TX 76102 SHIP TO: DELSA U. THOMAS 	1.0 LBS LTR 1 OF 1 TX 752 9-62  	UPS NEXT DAY AIR TRACKING #: 1Z A37 81X 01 9307 3237 	BILLING: P/P Reference # 1: FW-3718 Reference # 2: COS 9  CS 15 1.70 WNT180 35.0A 04/2013
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Fairchild, Rebecca R.

From: UPS Quantum View <auto-notify@ups.com>
Sent: Monday, May 13, 2013 10:12 AM
To: Fairchild, Rebecca R.
Subject: UPS Delivery Notification, Tracking Number 1ZA3781X0193073237

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At the request of SEC-FORT WORTH, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: 1ZA3781X0193073237
Delivery Date / Time: 13-May-2013 / 9:47 AM

Driver Release Location: FRONT DOOR

Shipment Detail

Ship To:
Delsa U. Thomas

Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 1.0 LBS
Reference Number 1: FW-3718
Reference Number 2: COS 9

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
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3. **GETTING YOUR SHIPMENT TO UPS**
UPS locations include the UPS Store®, UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.

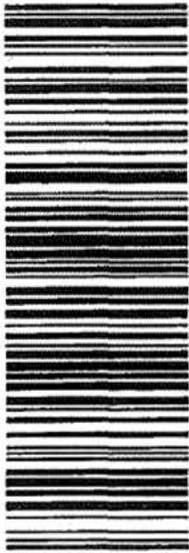
Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup

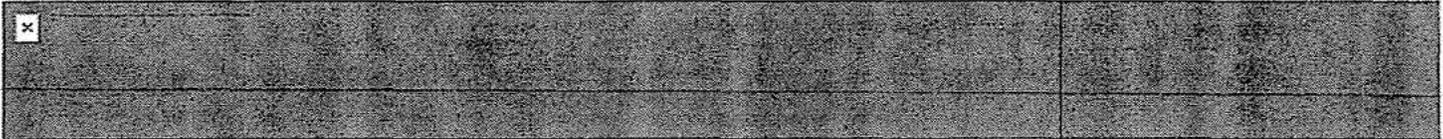
Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>REBECCA PAIRCHILD 817-900-2608 SEC-FORT WORTH 801 CHERRY ST FORT WORTH TX 76102</p> <p>SHIP TO: DELSA J THOMAS</p> 	<p>1.0 LBS LTR</p> <p>1 OF 1</p>	<p>TX 752 9-62</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z A37 81X 01 9341 1022</p> <p>1</p> 	<p>BILLING: P/P</p> <p>Reference #1: PW-3718 Reference # 2: COS 9</p> <p>CS 13.1.10. WNT250 39-04 04/2013</p> 
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Fairchild, Rebecca R.

From: UPS Quantum View <auto-notify@ups.com>
Sent: Monday, May 13, 2013 10:12 AM
To: Fairchild, Rebecca R.
Subject: UPS Delivery Notification, Tracking Number 1ZA3781X0193411022



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Important Delivery Information

Tracking Number: 1ZA3781X0193411022
Delivery Date / Time: 13-May-2013 / 9:47 AM

Driver Release Location: FRONT DOOR

Shipment Detail

Ship To:
Delsa U. Thomas
The Solomon Fund LP



Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 1.0 LBS
Reference Number 1: FW-3718
Reference Number 2: COS 9

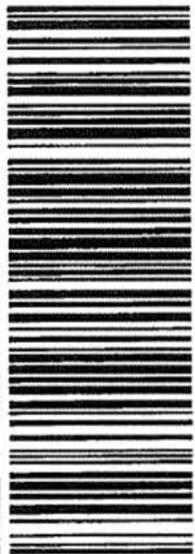
**EXHIBIT 3
TO MAGEE
DECLARATION**

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
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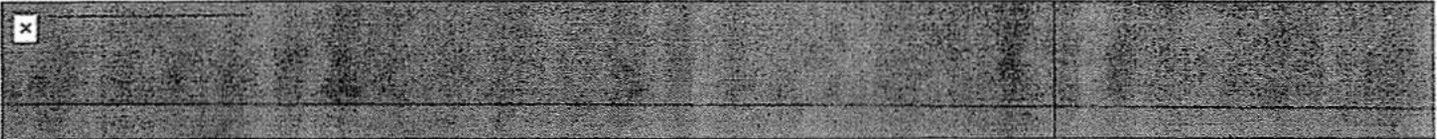
Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>REBECCA PAIRCHILD 817-900-2608 SEC FORT WORTH 801 CHERRY ST FORT WORTH TX 76102</p> <p>SHIP TO: DELSA U. THOMAS</p> <div style="background-color: black; width: 100px; height: 40px; margin-top: 10px;"></div>	<p>1.0 LBS LTR</p> <p>1 OF 1</p>	<p>TX 752 9-62</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z A37 81X 01 9970 9147</p> <p>1</p>		<p>BILLING: P/P</p> <p>Reference # 1: FW-3718 Reference # 2: COS 11</p> <p style="font-size: small;">CS 15.1.10 WINTERBRO 39.0A 04/2013</p> 
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Fairchild, Rebecca R.

From: UPS Quantum View <auto-notify@ups.com>
Sent: Tuesday, May 14, 2013 10:01 AM
To: Fairchild, Rebecca R.
Subject: UPS Delivery Notification, Tracking Number 1ZA3781X0199709147



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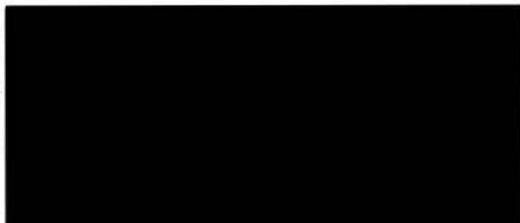
Important Delivery Information

Tracking Number: 1ZA3781X0199709147
Delivery Date / Time: 14-May-2013 / 9:44 AM

Driver Release Location: FRONT DOOR

Shipment Detail

Ship To:
Delsa U. Thomas



Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 1.0 LBS
Reference Number 1: FW-3718
Reference Number 2: COS 11

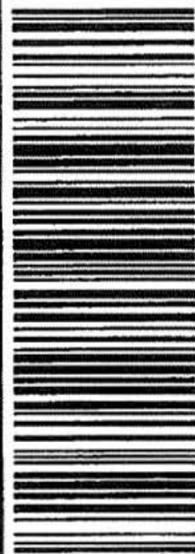
UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
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 Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
 Hand the package to any UPS driver in your area.

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Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>REBECCA FAIRCHILD 817-900-2608 SEC-FORT WORTH 801 CHERRY ST FORT WORTH TX 76102</p> <p>SHIP TO:</p> <div style="background-color: black; width: 100px; height: 60px; margin: 5px 0;"></div>	<p>TX 752 9-62</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z A37 81X 01 9599 0957</p> <p style="font-size: 2em; font-weight: bold;">1</p>	 <p>BILLING: P/P</p> <p>Reference # 1: FW-3718 Reference # 2: COS 11</p> <p style="font-size: 0.8em;">CS 15.1.10. NNTES80 39.0A.04/2013</p> 
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Fairchild, Rebecca R.

From: UPS Quantum View <auto-notify@ups.com>
Sent: Tuesday, May 14, 2013 10:01 AM
To: Fairchild, Rebecca R.
Subject: UPS Delivery Notification, Tracking Number 1ZA3781X0195990957

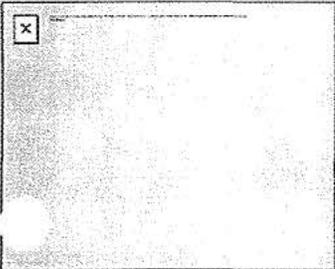


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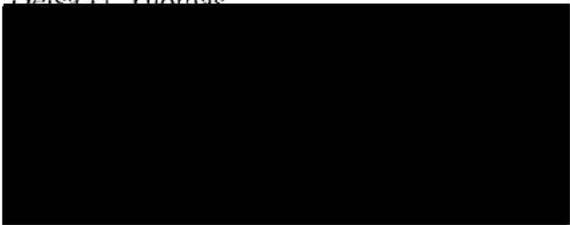
Important Delivery Information

Tracking Number: 1ZA3781X0195990957
Delivery Date / Time: 14-May-2013 / 9:44 AM

Driver Release Location: FRONT DOOR

Shipment Detail

Ship To:
Delsa H. Thomas



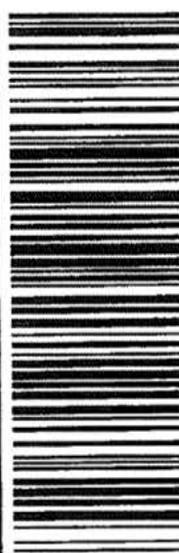
Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 1.0 LBS
Reference Number 1: FW-3718
Reference Number 2: COS 11

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
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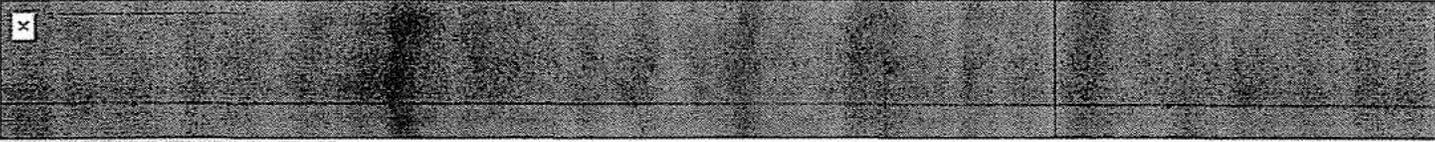
Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>REBECCA FAIRCHILD 817-900-2608 SEC. FORT WORTH 801 CHERRY ST. FORT WORTH TX 76102</p> <p>SHIP TO:</p> 	<p>1.0 LBS LTR</p> <p>1 OF 1</p> <p>TX 752 9-62</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z A37 81X 01 9689 6361</p> <p>1</p>		<p>BILLING: P/P</p> <p>Reference # 1: FW-3718 Reference # 2: COS 11</p> <p>CS 15.1.1.D. WNTT880 39.0A 04/2013</p> 
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Fairchild, Rebecca R.

From: UPS Quantum View <auto-notify@ups.com>
Sent: Tuesday, May 14, 2013 10:01 AM
To: Fairchild, Rebecca R.
Subject: UPS Delivery Notification, Tracking Number 1ZA3781X0196896361

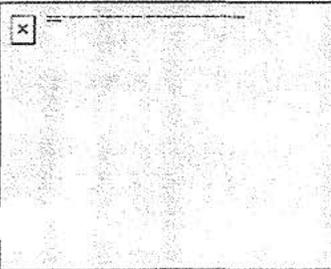


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At the request of SEC-FORT WORTH, this notice is to confirm that the following shipment has been delivered.



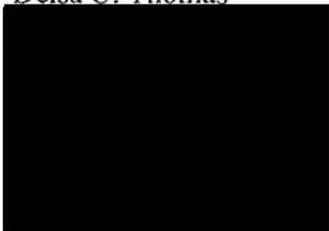
Important Delivery Information

Tracking Number: 1ZA3781X0196896361
Delivery Date / Time: 14-May-2013 / 9:44 AM

Driver Release Location: FRONT DOOR

Shipment Detail

Ship To:
Delsa U. Thomas



Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 1.0 LBS
Reference Number 1: FW-3718
Reference Number 2: COS 11

**EXHIBIT 4
TO MAGEE
DECLARATION**

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3806 / April 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15820

In the Matter of

Delsa U. Thomas and The
D. Christopher Capital
Management Group, LLC,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTIONS
203(e) AND 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940 AND NOTICE OF
HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Delsa U. Thomas and The D. Christopher Capital Management Group, LLC (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Delsa U. Thomas ("Thomas") is an individual residing in Dallas, Texas. Thomas formed The D. Christopher Capital Management Group in June 2011, at which time she registered it as an investment adviser with the Commission. Thomas is, and at all times has been, The D. Christopher Capital Management Group's sole principal.

2. The D. Christopher Capital Management Group, LLC (“DCCMG”) was incorporated by Thomas in Texas in June 2011, at which time it was also registered with the Commission as an investment adviser (SEC No. 801-72658; CRD No. 158639). DCCMG is headquartered in Irving, Texas.

B. ENTRY OF PERMANENT INJUNCTIONS AGAINST RESPONDENTS

3. On March 4, 2013, a final judgment was entered against Respondents, by default, permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, and Section 203A of the Advisers Act, and from aiding and abetting violations of Sections 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled *Securities and Exchange Commission v. Delsa U. Thomas, The D. Christopher Capital Management Group, LLC, and The Solomon Fund, LP*, Civil Action No. 3:13-CV-739-L, in the United States District Court for the Northern District of Texas (Dallas Division).

4. The Commission’s complaint alleged, and the district court found, that between at least October 2011 and February 14, 2013, Respondents perpetrated a fraudulent scheme through which they raised approximately \$2,300,000 from six investors located in the United States and Canada. Respondents secured the investments by misrepresenting that investors’ money would be used in bond transactions or invested in U.S. Treasury notes when, in reality, Respondents comingled funds, wasted funds in payments to other, shadowy companies, made Ponzi payments to investors in earlier investment programs, and squandered the remaining funds on personal expenses.

5. The Commission’s complaint further alleged that in June 2011, Thomas registered DCCMG as an investment adviser with the Commission, and that Respondents publicly claimed that DCCMG was an investment adviser that offered, according to its website, “strategic funding solutions through structuring private offerings” and “wealth management services ranging from advisory to complete portfolio management for all of our clients.”

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent DCCMG pursuant to Section 203(e) of the Advisers Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent Thomas pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file their Answers to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.


Jill M. Peterson
Assistant Secretary

**EXHIBIT 5
TO MAGEE
DECLARATION**

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-15820

In the Matter of

**Delsa U. Thomas and The
D. Christopher Capital
Management Group, LLC,**

Respondents.

**DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY
DISPOSITION AND BRIEF IN SUPPORT**

The Division of Enforcement (“Division”) submits this Motion for Summary Disposition¹ against Respondents Delsa U. Thomas (“Thomas”) and The D. Christopher Capital Management Group (“DCCMG”) (collectively, “Respondents”), and respectfully shows the following:

I
RELEVANT LITIGATION HISTORY

The United States District Court for the Northern District of Texas (“District Court”) entered a final judgment against Respondents, by default, on March 4, 2014 in *SEC v. Delsa U. Thomas, et al.*, Case No. 3:13-CV-00739-L, which permanently enjoined them from:

- future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)];
- future violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder [15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5];
- future violations of Section 203A of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-3a]; and

¹ Undersigned counsel for the Division certifies, in accordance with Commission Rule of Practice 250(c), that this Motion does not exceed 9,800 words.

- aiding and abetting violations of Sections 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder [15 U.S.C. § 80b-6(1), (2), (4); 17 C.F.R. 275.206(4)-8].²

On April 2, 2014, the Securities and Exchange Commission (“Commission”) initiated public administrative proceedings against Respondents pursuant to Sections 203(e) and 203(f) of the Advisers Act to determine (1) whether the allegations set forth in the Order Instituting Proceedings (“OIP”) are true and, in connection therewith, to afford Respondents the opportunity to establish any defenses to such allegations; and (2) what, if any, remedial action is appropriate in the public interest against DCCMG and Thomas and pursuant to Sections 203(e) and 203(f) of the Advisers Act, respectively. Because there are no genuine issues of material fact subject to reasonable dispute, and because the sole determination for the Court is the appropriate sanction, this Motion for Summary Disposition should be granted.

II. LEGAL STANDARD FOR SUMMARY DISPOSITION

Under Rule 250(b) of the Commission’s Rules of Practice, the ALJ may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). In assessing the summary-disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. *See Felix v. N.Y. City Transit Auth.*, 324 F.3d 102, 104 (2d Cir. 2003); *O’Shea v. Yellow Tech. Svcs., Inc.*, 185 F.3d 1093, 1096 (10th Cir. 1999); *Cooperman v. Individual, Inc.*, 171 F.3d 43, 46 (1st Cir. 1999). Furthermore, the facts of the non-movant’s pleadings shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts

² The Commission sued, and obtained judgment against The Solomon Fund, L.P., a third defendant in the civil litigation that is not named herein.

officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. 17 C.F.R. § 201.250(a).

The courts have recognized that the Commission modeled Rule of Practice 250 on Rule 56 of the Federal Rules of Civil Procedure. *See, e.g., Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010). By analogy to Rule 56, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon mere allegations or denials of its pleadings. At the summary-disposition stage, the ALJ's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. *See Anderson*, 477 U.S. at 249. While Rule 56 does not govern the Commission's administrative proceedings, *In the Matter of Jeffrey L. Gibson*, 2008 SEC LEXIS 236, n.26 (Feb. 4, 2008), *aff'd*, 561 F.3d 548 (6th Cir. 2009), it provides helpful guidance on issues not directly addressed by previous Commission opinions.

Finally, the Commission has repeatedly upheld use of summary disposition in cases such as this, where Respondents have been permanently enjoined from violating the federal securities laws and the sole determination for the ALJ concerns the appropriate sanction. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *See In the Matter of Eric T. Burns*, Initial Decision Release No. 582, (March 27, 2014) 2010

SEC LEXIS 1108; *In the Matter of John S. Brownson*, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12.

III.
FACTS BEYOND REASONABLE DISPUTE

The three key facts in these proceedings are established beyond reasonable dispute: (1) Respondents engaged in a fraudulent securities offering; (2) while engaged in the misconduct, Respondents were, or acted as, investment advisers; and (3) as a result of their misconduct, the District Court entered a final judgment against Respondents permanently enjoining them from future violations of the federal securities laws.

A. THE DISTRICT COURT PERMANENTLY ENJOINED RESPONDENTS FROM VIOLATING THE SECURITIES LAWS .

On February 14, 2013, the Commission filed its Complaint in *SEC v. Delsa U. Thomas, et al.*, alleging that Respondents committed securities fraud and other violations of the Securities Act, Exchange Act, and Advisers Act (collectively, “Securities Acts”).³ App. 006-019. Respondents were properly served with the Complaint on February 19, 2013. App. 021-026. Respondents’ deadline to answer or otherwise respond to the Complaint was March 12, 2013.

Respondents never answered or otherwise responded to the Complaint and, at the Commission’s request, the District Court entered defaults against Respondents on May 9, 2013, noting that they “failed to answer or otherwise defend as directed within the time allowed.” App. 028-035; 037. The Commission moved for entry of default judgment against Respondents on May 10, 2013. App. 039-147. Nearly a year later, and after receiving no response from Respondents to either the Complaint or the Motion for Default Judgment, the District Court granted the Commission’s Motion for Default Judgment on March 4, 2014. App. 149-157. In so doing, the

³ The Division of Enforcement submits, and incorporates fully herein its Appendix In Support of its Brief In Support of Motion For Summary Disposition.

District Court found that Respondents were properly served in the litigation but did not file answers or otherwise defend against the Commission's allegations and, therefore the Commission was entitled to judgment against them. App. 150-151. The Court entered its final judgment against Respondents on March 4, 2014, permanently enjoining them from future violations of the antifraud and other provisions of the Securities Acts. App. 159-161, permanently enjoining Respondents from violating 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; 15 U.S.C. § 80b-3a; 15 U.S.C. § 80b-6(1), (2), (4); and 17 C.F.R. § 275.206(4)-8.⁴

In its March 4, 2014 Memorandum Opinion and Order granting the Commission's Motion for Final Default Judgment, the District Court "accept[ed] as true the well-pleaded allegations stated by the Commission in its Complaint and the facts set forth in the evidence in support of the Commission's Motion for Final Default Judgment." App. 151. The District Court's findings and conclusions in the underlying action are immune from attack in this administrative proceeding, and the ALJ should consider the District Court's findings in determining appropriate sanctions against Respondents. *See In the Matter of Gregory Bartko, Esq.*, Initial Decision Release No. 700, 2012 § LEXIS 1038 (Mar. 30, 2012) *aff'd*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *43-44 & nn.69-70 (Mar. 7, 2014) (collecting cases); *In the Matter of Locke Capital Management, Inc.*, Initial Decision Release No. 450 (February 6, 2012) 2012 SEC LEXIS 416 (findings and conclusions immune from attack where injunction was entered through default judgment), Exchange Act Release No. 3381 (March 9, 2012) 2012 SEC LEXIS 760; *In the Matter of Phillip J. Milligan*, Exchange Act Release No. 61790 (Mar. 26, 2010), 2010 SEC

⁴ The District Court's judgment also permanently enjoined The Solomon Fund from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and ordered it to disgorge, jointly and severally with Respondents, \$1,980,000 plus prejudgment interest of \$9,939.56 and to pay a third-tier civil penalty in the amount of \$725,000. App. 159-160.

LEXIS 1163; *In the Matter of Ted Harold Westerfield*, Exchange Act Release No. 41126 (Mar. 1, 1999), 1999 SEC LEXIS n.22 (collecting cases).

Without explanation and despite the public record of the District Court's judgment, Respondents "deny that a final judgment was entered against them on March 4 201[4]." *See* Answer of Respondents Delsa U. Thomas and The D. Christopher Capital Management Group, LLC ("Answer") at p. 2, ¶ 3. Respondents' denial notwithstanding, it is well-settled that a default judgment *is* a final judgment on the merits and has a preclusive effect under the principle of *res judicata*. *See Morris v. Jones*, 329 U.S. 545, 550-51 (1947); *Shah v. United States*, 540 Fed. Appx. 91 (3d Cir. 2013); *Albano v. Norwest Fin. Haw., Inc.*, 244 F.3d 1061 (9th Cir. 2001); *W. Coast Distrib., Inc. v. Pearce*, 2010 U.S. Dist. LEXIS 2829 (N.D. Tex. Jan. 14, 2010). Because the facts that (a) the district court entered a final judgment enjoining Respondents from violating the federal securities laws; and (b) the *res judicata* effect of the judgment in these proceedings are beyond reasonable dispute, this Court should grant the Division's Motion for Summary Disposition.

B. THE DISTRICT COURT CONCLUDED THAT RESPONDENTS ENGAGED IN A FRAUDULENT SECURITIES OFFERING.

Taking the Commission's allegations as true, the District Court found that Respondents fraudulently induced members of Thomas's church, and others, to invest approximately \$2,300,000 million with them, which funds Respondents represented would be invested in bond transactions or U.S. Treasury notes. App. 006; 010-014; 062; 149; 151. The Commission also alleged, and the District Court found, that contrary to their promises to investors, Respondents "commingled investor funds, lost investor funds in reckless payments to other shadowy companies, made Ponzi payments to investors in Thomas's earlier investment programs, and squandered many of the remaining funds on personal expenses." App. 006; 013-014; 062-064 (and exhibits

incorporated therein); 149-150. In addition, “Thomas, as the sole principal and actor for [DCCMG], made material misrepresentations and omissions of fact about her experience and success, the safety of the supposed investments she and [DCCMG] offered, and potential investment returns.” App. 007; 008-014; 150. Moreover, Respondents “continue to lull investors with empty promises of repayment despite having no funds with which to compensate their victims.” App. 007; 014; 150. Ultimately, the District Court agreed with the Commission that Respondents’ conduct constituted fraud in connection with the offer, purchase, and sale of securities in violation of the numerous securities laws alleged in the Complaint and enumerated herein. App. 150-153.

C. THE DISTRICT COURT CONCLUDED THAT THOMAS AND DCCMG WERE, OR ACTED AS, INVESTMENT ADVISERS WHEN THEY ENGAGED IN THE MISCONDUCT.

Taking the Commission’s allegations and evidence as true, Thomas is “the sole principal and actor” for DCCMG and that “[i]n June 2011, Delsa Thomas formed purported investment adviser The D. Christopher Capital Management Group, LLC” and registered it as an investment adviser with the Commission.⁵ App. 006, 008. “DCCMG purports to be an investment adviser that offers, according to its website, ‘strategic funding solutions through structuring private offerings’ and ‘wealth management services ranging from advisory to complete portfolio management for all of our clients.’” App. 010. And, importantly, “[a]t all relevant times, Thomas and DCCMG operated as investment advisers as defined by . . . the Advisers Act . . . and served in that capacity with respect to their clients and investors” and “while acting as investment advisers[:]

- directly or indirectly, by use of the mails or means and instrumentalities of interstate commerce: (a) with requisite *scienter*, employed devices, scheme, and artifices to defraud

⁵ Respondents correctly assert that they registered with the Commission in September 2011. Respondents filed their first Form ADV to register as an investment adviser with the Commission in August 2011. *See* Declaration of Jessica B. Magee, attached hereto as Exhibit A. The Complaint correctly alleged that Respondents’ actionable conduct began in October 2011.

clients; and (b) engaged in transactions, practices, and courses of business which operated as a fraud or deceit upon clients and prospective clients; and

- pooled investment vehicles, made untrue statements of material facts or omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to investors or prospective investors, or otherwise engaged in acts, practices, or courses of business that were fraudulent, deceptive, or manipulative with respect to investors or prospective investors,

which conduct violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. App. 016-017; 151-153; 159-161.⁶ DCCMG “is not otherwise exempt from the provisions of Section 203A of the Advisers Act.” App. 017. And while DCCMG was ineligible to register with the Commission as an investment adviser because it lacked sufficient funds under management, it was nevertheless required to register with the appropriate state entity under Section 203 of the Advisers Act. App. 009-010; 017. Consequently, the District Court decided that DCCMG violated Section 203A of the Advisers Act and thus permanently enjoined it and Thomas from future violations of the provision. App. 017-018; 051-052; 153; 161.

IV. ARGUMENT AND AUTHORITIES

Section 203(e) of the Advisers Act authorizes the Commission to sanction DCCMG if, as relevant here, it is in the public interest to do so and (a) DCCMG or any person associated with it has been permanently enjoined from acting as an investment adviser or from engaging in or continuing any conduct or practice in connection with such activity, or in connection with the

⁶ As investment advisers or associated persons thereof, Respondents are fiduciaries. *In the Matter of Fundamental Portfolio Advisors, Inc.*, Securities Act Release No. 8251 (July 15, 2003), 56 S.E.C. 651, 684; see *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92, 194, 201 (1963); *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979). As fiduciaries, they are required “to act for the benefit of their clients, . . . to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients.” *SEC v. DiBella*, 2007 U.S. Dist. LEXIS 73850 (D. Conn. Oct. 3, 2007) *aff’d* 587 F.3d 553, 567 (2d Cir. 2009); *SEC v. Moran*, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996), *aff’d*, 587 F.3d 553 (2d Cir. 2009); see also *Capital Gains Research Bureau, Inc.*, 375 U.S. at 194 (“Courts have imposed on a fiduciary an affirmative duty of ‘utmost good faith, and full and fair disclosure of all material facts,’ as well as an affirmative obligation ‘to employ reasonable care to avoid misleading’ his clients.” (footnotes omitted)). “[W]hat is required is ‘. . . not simply truth in the statements volunteered but disclosure’ [of material facts].” *Capital Gains Research Bureau, Inc.*, 375 U.S. at 201.

purchase or sale of any security; or (b) DCCMG willfully violated any provision of the Securities Act, Exchange Act or Advisers Act, among others. *See* 15 U.S.C. § 80b-3(e). Likewise, Section 203(f) of the Advisers Act permits the Commission, acting in the public interest, to permanently bar Thomas from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, so long as she was enjoined, or engaged in willful violations of the securities laws, as described above. 15 U.S.C. § 80b-3(f).

As shown herein, Thomas was associated with, and controlled, investment adviser DCCMG as its sole principal and actor. Respondents were permanently enjoined from future violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Advisers Act Sections 203A, 206 (1), 206(2), and 206(4) and Rule 206(4)-8 thereunder based on their willful violations of these provisions of the federal securities laws. Accordingly, there is no genuine issue of material fact and this proceeding may be resolved in summary disposition without a hearing.

A. SANCTIONS ARE APPROPRIATE UNDER ADVISERS ACT SECTIONS 203(e) AND 203(f).

Sections 203(e) and 203(f) of the Advisers Act provide that their sanctions may only be imposed if they are “in the public interest.” 15 U.S.C. § 80b-3(e), (f). The relevant factors in making a public-interest determination are:

[T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of *scienter* involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

The Commission's inquiry into the appropriate sanction to protect the public interest is a

flexible one, and no one factor is dispositive. *See In the Matter of Gary M. Kornman*, Exchange Act Release No. 59403 (Feb. 13, 2009), 2009 SEC LEXIS 367 *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). Moreover, the Commission regularly considers the deterrent effect of administrative sanctions. *See, e.g., In the Matter of Schield Mgmt. Co.*, Exchange Act Release No. 53201 (Jan. 31, 2006), 58 S.E.C. 1197, **1216-18 and n. 46. And industry bars have long been considered effective deterrence. *See In the Matter of Guy P. Riordan*, Exchange Act Release No. 61153 (Dec. 11, 2009), 2009 SEC LEXIS 4166, n.107 (collecting cases).

All of the *Steadman* factors weigh in favor of revoking DCCMG's registration and assessing permanent collateral bars against Thomas because their efforts to defraud at least six investors of more than \$2,000,000 were multiple, continued, and egregious. App. 006-019; 053. Moreover, each of the Defendants acted with *scienter* in the extreme. *Id.* Thomas, with DCCMG, orchestrated multiple schemes to raise and then misappropriate funds. These schemes were conducted intentionally. They also made numerous materially false statements and repeatedly omitted material facts regarding the safety of the supposed investments they sold, the prospective rate of return, their true use of proceeds, and their experience and prior success with similar transactions. *Id.* Moreover, Respondents engaged in a deceptive scheme that defrauded investors by making Ponzi payments that induced additional investments. *Id.*

Notably, Respondents have not taken responsibility for, or even acknowledged, their wrongdoing or offered any assurances against future violations. *See* Declaration of Jessica B. Magee, attached hereto as Exhibit A, App. 002-0004, and incorporated herein. Of equal importance is the fact that Respondents are still registered and acting as investment advisers, creating a ready opportunity and high likelihood for future violations. *Id.* at App. 004; 419-470. Indeed, Defendants have offered neither evidence nor assurance that the fraud alleged in the Complaint has ceased. *Id.*

at App. 004. Thus, applying the *Steadman* factors to Respondents' conduct establishes that it is in the public interest to revoke DCCMG's registration and to assess permanent collateral bars against Thomas.

B. THE FULL RANGE OF BARS SHOULD BE IMPOSED AGAINST THOMAS AND DCCMG.

For the reasons discussed above, the Division requests that the Commission revoke DCCMG's registration as an investment adviser pursuant to Section 203(e) of the Advisers Act. The Division further requests that Thomas, who, as DCCMG's sole principal and actor has acted as – or associated with – an investment adviser since June 2011, be permanently barred under Section 203(f) of the Advisers Act from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.⁷

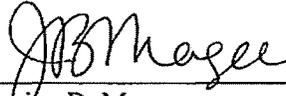
**V.
CONCLUSION**

As reflected above, the Division has demonstrated that there is no reasonable dispute regarding Respondents' fraudulent conduct, the District Court's permanent injunction against them, their investment adviser status both at the time of the misconduct and continuing today, or the public interest in sanctioning them. Thus, the Division respectfully requests the ALJ grant this Motion for Summary Disposition and impose full, permanent collateral bars against Thomas under Section 203(f) of the Advisers Act and revoke DCCMG's registration under Section 203(e) of the Advisers Act.

⁷ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") amended Section 203(f) of the Advisers Act to add collateral bars to the statute. Because Respondents' alleged conduct began in June 2011, after Dodd-Frank's 2010 enactment, there are no concerns regarding retroactive application of the collateral bars.

Dated: July 21, 2014.

Respectfully submitted,



Jessica B. Magee
Texas Bar No. 24037757
United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 978-6465
(817) 978-4927 (facsimile)
MageeJ@sec.gov

COUNSEL FOR
DIVISION OF ENFORCEMENT

**EXHIBIT 6
TO MAGEE
DECLARATION**

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1691/August 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15820

In the Matter of

DELSA U. THOMAS AND
THE D. CHRISTOPHER CAPITAL
MANAGEMENT GROUP, LLC

ORDER ON MOTION FOR EXTENSION

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on April 2, 2014, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 against Delsa U. Thomas and The D. Christopher Capital Management Group, LLC (collectively, Respondents).

A telephonic prehearing conference was held on May 27, 2014. Following the prehearing conference, I ordered Respondents to file an Answer by June 20, 2014, and the parties to file motions for summary disposition by June 27, 2014, oppositions by July 18, 2014, and replies, if any, by July 28, 2014. Delsa U. Thomas, Admin. Proc. Rulings Release No. 1469, 2014 SEC LEXIS 1824 (May 28, 2014).

On June 20, 2014, the day their Answer was due, Respondents filed an Unopposed Motion to Extend Answer Date and Dates to File Motions for Summary Disposition, Oppositions, and Replies, requesting that the deadline for filing their Answer be continued to July 7, 2014, the deadline for motions for summary disposition be continued to July 14, 2014, the deadline for oppositions be continued to August 4, 2014, and the deadline for replies be continued to August 14, 2014. I granted this motion. Delsa U. Thomas, Admin. Proc. Rulings Release No. 1547, 2014 SEC LEXIS 2173 (June 20, 2014).

On July 7, 2014, the day their Answer was then due, this Office received Respondents' Second Unopposed Motion to Extend Answer Date and Dates to File Motions for Summary Disposition, Oppositions, and Replies, requesting that the deadline for filing their Answers be continued to July 14, 2014, the deadline for motions for summary dispositions be continued to July 21, 2014, the deadline for oppositions be continued to August 11, 2014, and the deadline for replies be continued to August 21, 2014. Again, I granted this motion. Delsa U. Thomas, Admin. Proc. Rulings Release No. 1590, 2014 SEC LEXIS 2418 (July 7, 2014).

Finally, on the afternoon of August 8, 2014, one business day before their opposition was now due, Respondents emailed this Office a Motion to Extend Answer Date to File Motions for Opposition to Summary Disposition, and Replies (Motion), requesting that the deadline for their opposition be extended to September 8, 2014, and the deadline for replies be extended to September 22, 2014. Respondents argue that this postponement is necessary for them to secure legal counsel after their most recent representation withdrew.

Under Commission Rule of Practice 161, the factors to consider in determining whether to grant a motion for extension include

- (i) the length of the proceeding to date; (ii) the number of postponements, adjournments or extensions already granted; (iii) the stage of the proceedings at the time of the request; (iv) the impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and (v) any other such matters as justice may require.

17 C.F.R. § 201.161(b). Rule 161 also instructs the hearing officer to consider “any other relevant factors” and to “adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.” Id.

These factors weigh against granting this Motion. The OIP was served on Respondents over four months ago, and Respondents have been on notice to expect a motion for summary disposition from the Division since at least May 27, 2014, when the prehearing conference was held. In addition, as demonstrated above, this Motion is Respondents' third request for an extension, and follows a pattern of waiting to request an extension until the day, or day before, filings are due.¹ I am also concerned that Respondents' requested dates call for briefing to conclude in late September, leaving me only slightly more than a month to consider the evidence and briefings and to render a decision. These concerns are magnified by Respondents' repeated inability to meet deadlines, even after multiple extensions.

I also find that Respondents have not made a “strong showing that the denial of the request or motion would substantially prejudice their case.” The Division filed its motion for summary disposition on July 21, 2014. Respondents were represented by their prior counsel until August 1, 2014, a span of over ten days after Division filed its motion. Respondents have not shown, or even argued, that the work done by their prior counsel before withdrawing is not sufficient to respond to the Division's motion. Instead, Respondents merely state that the extension is necessary “to have the full capacity to respond appropriately” to Division's motion.

¹ Because this Motion was filed only one business day before Respondents' filings were due, the Division has not indicated its position. Respondents claim that they attempted to confer with Division counsel, but admit that those attempts at communication occurred on August 8, 2014, the day the Motion was emailed to this Office.

This is not a sufficient showing to overcome the “policy of strongly disfavoring” a motion for extension.

Accordingly, Respondents’ Motion is DENIED WITHOUT PREJUDICE. The dates set in my July 7, 2014, order continue to stand. Respondents may submit additional briefing demonstrating in greater detail what, if any, substantial prejudice they may suffer absent an extension.

Cameron Elliot
Administrative Law Judge

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1702/August 14, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15820

In the Matter of

DELSA U. THOMAS AND
THE D. CHRISTOPHER CAPITAL
MANAGEMENT GROUP, LLC

ORDER ON UNTIMELY FILING OF
OPPOSITION TO MOTION FOR
SUMMARY DISPOSITION

The Securities and Exchange Commission issued an Order Instituting Proceedings on April 2, 2014, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 against Delsa U. Thomas and The D. Christopher Capital Management Group, LLC (collectively, Respondents).

On July 7, 2014, I ordered that motions for summary disposition were due by July 21, 2014, oppositions were due by August 11, 2014, and replies were due by August 21, 2014. *Delsa U. Thomas*, Admin. Proc. Rulings Release No. 1590, 2014 SEC LEXIS 2418. On July 21, 2014, the Division of Enforcement (Division) filed its motion for summary disposition.

On August 8, 2014, Respondents emailed to this Office a motion requesting that the deadline for their opposition be extended to September 8, 2014, and the deadline for replies be extended to September 22, 2014. I denied their request without prejudice on August 11, 2014, and held that the dates set in my July 7, 2014, order continued to stand. *Delsa U. Thomas*, Admin Proc. Rulings Release No. 1691, 2014 SEC LEXIS 2879.

On August 14, 2014, Respondents emailed to this Office their opposition to the Division's motion for summary disposition. Although technically untimely, given the substance and brevity of Respondents' opposition, accepting it for filing will not unduly prejudice the Division, and I will treat it as timely filed. The Division's reply remains due by August 21, 2014.

SO ORDERED.

Cameron Elliot
Administrative Law Judge